

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2009**

BY DELEGATES FOSTER, BURKHAMMER, KIMES,

HIGGINBOTHAM, FORSHT, KEATON, ESPINOSA AND PRITT

[Passed March 19, 2021; in effect ninety days from passage.]



1 AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new section,  
2 designated §7-5-25; to amend and reenact §8-5-12 of said code; to amend and reenact  
3 §12-3-13b of said code; to amend and reenact §18A-4-9 of said code; to amend and  
4 reenact §21-5-1 and §21-5-3 of said code; and to amend and reenact §46A-2-116 of said  
5 code, all relating generally to deductions from wages; defining terms under the Wage  
6 Payment and Collection Act; including union, labor organization, or club dues or fees as  
7 deductions; expanding types of insurance considered as deductions; prohibiting deduction  
8 of union, labor organization, or club dues or fees from wages of public employees;  
9 providing an exception for certain municipal employees; incorporating definition of  
10 “assignment of earnings” from Consumer Credit and Protection Act into Wage Payment  
11 and Collection Act; replacing notarization requirement for assignments or orders for future  
12 wages with requirement that such assignments or orders be in writing; protecting right of  
13 private employers and their employees to agree between themselves as to payroll  
14 deductions; protecting right of employees to participate in unions, labor organizations, and  
15 clubs; excluding union, labor organization, or club dues or fees from definition of  
16 “assignment of earnings” in the Consumer Credit Protection Act; expanding types of  
17 insurance excluded from assignments; prohibiting deductions and assignments of  
18 earnings for union, labor organization, or club dues or fees from the compensation of  
19 county officers and employees; prohibiting deductions and assignments of earnings for  
20 union, labor organization, or club dues or fees from the compensation of certain municipal  
21 officers or employees; eliminating voluntary deductions from net wages of state officers  
22 and employees for payment of membership dues or fees to employee organizations;  
23 prohibiting deductions and assignments of earnings for union, labor organization, or club  
24 dues or fees from the compensation of state officers and employees; and prohibiting  
25 deductions and assignments of earnings for union, labor organization, or club dues or fees  
26 from the compensation of teachers and other school employees.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 5. FISCAL AFFAIRS.**

#### **§7-5-25. Prohibition against certain deductions and assignments of earnings from compensation of county officers or employees.**

1           No deductions or assignments of earnings shall be allowed for union, labor organization,  
2 or club dues or fees from the compensation of county officers and employees.

## **CHAPTER 8. MUNICIPAL CORPORATIONS.**

### **ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.**

#### **§8-5-12. Compensation of officers and employees.**

1           (a) Notwithstanding any charter provision to the contrary, the governing body of every  
2 municipality shall by ordinance fix or cause to be fixed the salary or compensation of every  
3 municipal officer and employee: *Provided*, That the salary of any officer shall not be increased or  
4 diminished during his or her term.

5           (b) The governing body of every municipality shall have plenary power and authority to  
6 provide by ordinance for the allowance of time off of officers and employees with pay for vacations  
7 and illness and for personnel management incentives, as additional consideration for their  
8 services and employment.

9           (c) No deductions or assignments of earnings shall be allowed for union, labor  
10 organization, or club dues or fees from the compensation of officers or employees covered by this  
11 section: *Provided*, That this subsection shall not apply to municipal employees covered by a  
12 collective bargaining agreement with a municipality which is in effect on July 1, 2021.

## **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

### **ARTICLE 3. APPROPRIATIONS, EXPENDITURES, AND DEDUCTIONS.**

#### **§12-3-13b. Voluntary deductions by State Auditor from salaries of employees to pay supplemental health and life insurance premiums; voluntary other deductions.**

1           (a) Any officer or employee of the State of West Virginia may authorize that a voluntary  
2 deduction from his or her net wages be made for any supplemental health and life insurance  
3 premium, subject to prior approval by the Auditor. Such deductions shall be authorized on a form  
4 provided by the Auditor of the State of West Virginia and shall state:

5           (1) The identity of the employee;

6           (2) The amount and frequency of such deductions; and

7           (3) The identity and address of the insurance company to which such dues shall be paid.

8           (b) Upon execution of such authorization and its receipt by the office of the Auditor, such  
9 deductions shall be made in the manner specified on the form and remitted to the designated  
10 insurance company on the tenth day of each month: *Provided*, That the Auditor may approve and  
11 authorize voluntary other deductions, as defined under §21-5-1 of this code, to be made in  
12 accordance with rules proposed by the Auditor pursuant to §29A-3-1 *et seq.* of this code:  
13 *Provided, however*, That deductions shall be made at least twice monthly. Deduction  
14 authorizations may be revoked at any time 30 days prior to the date on which the deduction is  
15 regularly made and on a form to be provided by the office of the State Auditor.

16           (c) No deductions or assignments of earnings shall be allowed for union, labor  
17 organization, or club dues or fees from the compensation of officers and employees covered by  
18 this section.

## **CHAPTER 18A. SCHOOL PERSONNEL.**

### **ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

#### **§18A-4-9. Payment of teachers and other employees; withholdings.**

1 Teachers and all other employees whose salaries or wages are payable out of the school  
2 current fund shall be paid for their services by orders duly signed by the president and secretary  
3 of the board in accordance with the following provisions:

4 (1) Notwithstanding any other provisions of this chapter and §18-1-1 *et seq.* of this code,  
5 the number of pays to be made during the school year to the various classes of employees shall  
6 be determined by the board: *Provided*, That the sum of such pays for any employee does not  
7 exceed the equivalent of an annual salary based upon 12 calendar months.

8 (2) In the event a teacher or other employee is not paid the full salary or wage earned in  
9 the fiscal year in which the work is performed, the unpaid amount may be paid during July and  
10 August of the following fiscal year.

11 (3) Adjustments for time loss due to absence may be made in the next paycheck following  
12 such time loss.

13 (4) The county board may withhold the pay of any teacher or employee until he or she has  
14 made the reports required by the board or the state superintendent.

15 (5) Accompanying the pay of each employee shall be an accounting of gross earnings, all  
16 withholdings, and the dollar value of all benefits provided by the state on behalf of the employee.

17 (6) No deductions or assignments of earnings shall be allowed for union, labor  
18 organization, or club dues or fees from the compensation of teachers and other employees  
19 covered by this section.

## **CHAPTER 21. LABOR.**

### **ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

#### **§21-5-1. Definitions.**

1 As used in this article:

2 (a) The term "firm" includes any partnership, association, joint-stock company, trust,  
3 division of a corporation, the administrator or executor of the estate of a deceased individual, or  
4 the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

5           (b) The term “employee” or “employees” includes any person suffered or permitted to work  
6 by a person, firm, or corporation, except those classified as an independent contractor pursuant  
7 to §21-5l-4 of this code.

8           (c) The term “wages” means compensation for labor or services rendered by an employee,  
9 whether the amount is determined on a time, task, piece, commission, or other basis of  
10 calculation. As used in §21-5-4, §21-5-5, §21-5-8a, §21-5-10, and §21-5-12 of this code, the term  
11 “wages” shall also include then accrued fringe benefits capable of calculation and payable directly  
12 to an employee: *Provided*, That nothing herein contained shall require fringe benefits to be  
13 calculated contrary to any agreement between an employer and his or her employees which does  
14 not contradict the provisions of this article.

15           (d) The term “commissioner” means Commissioner of Labor or his or her designated  
16 representative.

17           (e) The term “railroad company” includes any firm or corporation engaged primarily in the  
18 business of transportation by rail.

19           (f) The term “special agreement” means an arrangement filed with and approved by the  
20 commissioner whereby a person, firm, or corporation is permitted upon a compelling showing of  
21 good cause to establish regular paydays less frequently than once in every two weeks: *Provided*,  
22 That in no event shall the employee be paid in full less frequently than once each calendar month  
23 on a regularly established schedule.

24           (g) The term “deductions” includes amounts required by law to be withheld, and amounts  
25 authorized for union, labor organization, or club dues or fees, pension plans, payroll savings  
26 plans, credit unions, charities, and any form of insurance offered by an employer: *Provided*, That  
27 for a public employee, other than a municipal employee covered by a collective bargaining  
28 agreement with a municipality which is in effect on July 1, 2021, the term “deductions” shall not  
29 include any amount for union, labor organization, or club dues or fees.

30 (h) The term “officer” shall include officers or agents in the management of a corporation  
31 or firm who knowingly permit the corporation or firm to violate the provisions of this article.

32 (i) The term “wages due” shall include at least all wages earned up to and including the  
33 twelfth day immediately preceding the regular payday.

34 (j) The term “construction” means the furnishing of work in the fulfillment of a contract for  
35 the construction, alteration, decoration, painting, or improvement of a new or existing building,  
36 structure, roadway, or pipeline, or any part thereof, or for the alteration, improvement, or  
37 development of real property: *Provided*, That construction performed for the owner or lessee of a  
38 single family dwelling or a family farming enterprise is excluded.

39 (k) The term “minerals” means clay, coal, flagstone, gravel, limestone, manganese, sand,  
40 sandstone, shale, iron ore, and any other metallurgical ore.

41 (l) The term “fringe benefits” means any benefit provided an employee or group of  
42 employees by an employer, or which is required by law, and includes regular vacation, graduated  
43 vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses,  
44 sickness and accident benefits, and benefits relating to medical and pension coverage.

45 (m) The term “employer” means any person, firm, or corporation employing any employee.

46 (n) The term “doing business in this state” means having employees actively engaged in  
47 the intended principal activity of the person, firm, or corporation in West Virginia.

48 (o) The term “assignment”, as used in §21-5-3 of this code, shall have the same meaning  
49 as the term “assignment of earnings” set forth in §46A-2-116(2)(b) of this code.

**§21-5-3. Payment of wages by employers other than railroads; assignments of wages.**

1 (a) Every person, firm, or corporation doing business in this state, except railroad  
2 companies as provided in §21-5-1 of this code, shall settle with its employees at least twice every  
3 month and with no more than 19 days between settlements, unless otherwise provided by special  
4 agreement, and pay them the wages due, less authorized deductions and authorized wage  
5 assignments, for their work or services.

6 (b) Payment required in subsection (a) of this section shall be made:

7 (1) In lawful money of the United States;

8 (2) By cash order as described and required in §21-5-4 of this code;

9 (3) By deposit or electronic transfer of immediately available funds into an employee's  
10 payroll card account in a federally insured depository institution. The term "payroll card account"  
11 means an account in a federally insured depository institution that is directly or indirectly  
12 established through an employer and to which electronic fund transfers of the employee's wages,  
13 salary, commissions, or other compensation are made on a recurring basis, whether the account  
14 is operated or managed by the employer, a third person payroll processor, a depository institution,  
15 or another person. "Payroll card" means a card, code, or combination thereof or other means of  
16 access to an employee's payroll card account, by which the employee may initiate electronic fund  
17 transfers or use a payroll card to make purchases or payments. Payment of employee  
18 compensation by means of a payroll card must be agreed upon in writing by both the person, firm,  
19 or corporation paying the compensation and the person being compensated; or

20 (4) By any method of depositing immediately available funds in an employee's demand or  
21 time account in a bank, credit union, or savings and loan institution that may be agreed upon in  
22 writing between the employee and such person, firm, or corporation, which agreement shall  
23 specifically identify the employee, the financial institution, the type of account, and the account  
24 number: *Provided*, That nothing herein contained shall be construed in a manner to require any  
25 person, firm, or corporation to pay employees by depositing funds in a financial institution.

26 (c) If, at any time of payment, any employee is absent from his or her regular place of labor  
27 and does not receive his or her wages through a duly authorized representative, he or she is  
28 entitled to payment at any time thereafter upon demand upon the proper paymaster at the place  
29 where his or her wages are usually paid and where the next pay is due.

30 (d) Nothing herein contained may affect the right of an employee to assign part of his or  
31 her claim against his or her employer except as in subsection (e) of this section.

32 (e) No assignment of or order for future wages may be valid for a period exceeding one  
33 year from the date of the assignment or order. An assignment or order shall be in writing and shall  
34 specify thereon the total amount due and collectible by virtue of the same and, unless otherwise  
35 provided for in subsection (f) of this section, three-fourths of the periodical earnings or wages of  
36 the assignor are all times exempt from such assignment or order and no assignment or order is  
37 valid which does not so state upon its face: *Provided*, That no such order or assignment is valid  
38 unless the written acceptance of the employer of the assignor to the making thereof is endorsed  
39 thereon: *Provided, however*, That nothing herein contained may be construed as affecting the  
40 right of a private employer and its employees to agree between themselves as to deductions to  
41 be made from the payroll of employees.

42 (f) If an employee of the state has been overpaid wages, including incremental salary  
43 increases pursuant to §5-5-2 of this code, an employee may voluntarily authorize a written  
44 assignment or order for future wages to the state to repay the overpayment in an amount not to  
45 exceed three-fourths of his or her periodical earnings or wages.

46 (g) Nothing in this chapter shall be construed to interfere with the right of an employee to  
47 join, become a member of, contribute to, donate to, or pay dues or fees to a union, labor  
48 organization, or club.

## **CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.**

### **ARTICLE 2. CONSUMER CREDIT PROTECTION.**

#### **§46A-2-116. Assignment of earnings.**

1 (1) The maximum part of the aggregate disposable earnings of an individual for any  
2 workweek which may be subjected to any one or more assignments of earnings for the payment  
3 of a debt or debts arising from one or more consumer credit sales, consumer leases, or consumer

4 loans, or one or more sales as defined in §46A-6-102 of this code, may not exceed 25 percent of  
5 his or her disposable earnings for that week.

6 (2) As used in this section:

7 (a) "Disposable earnings" means that part of the earnings of an individual remaining after  
8 the deduction from those earnings of amounts required by law to be withheld; and

9 (b) "Assignment of earnings" includes all forms of assignments, deductions, transfers, or  
10 sales of earnings to another, either as payment or as security, and whether stated to be revocable  
11 or nonrevocable, and includes any deductions authorized under the provisions of §21-5-3 of this  
12 code, except deductions for union, labor organization, or club dues or fees, pension plans, payroll  
13 savings plans, charities, stock purchase plans, and any form of insurance offered by an employer.

14 (3) Any assignment of earnings and any deduction under §21-5-3 of this code shall be  
15 revocable by the employee at will at any time, notwithstanding any provision to the contrary.

16 (4) The priority of multiple assignments of earnings shall be according to the date and time  
17 of each such assignment.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2021.

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*Governor*